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VIA ELECTRONIC FILING

Ms. Magalie Roman Salas
Office of the Secretary
Federal Communications Commission
445 Twelfth Street, S.W.,
Washington, D.C. 20554

Re: CC Docket No. 00-199

Dear Ms. Salas:

Transmitted herewith, on behalf of TDS Telecommunications Corporation (TDS Telecom), is an electronic version of its comments in the above referenced proceeding.

In the event of any questions concerning this matter, please communicate with this office.

Very truly yours,

Margot Smiley Humphrey

Enclosure

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
2000 Biennial Regulatory Review –	)	
Comprehensive Review of the	)	
Accounting Requirements and	)	CC Docket No. 00-199
ARMIS Reporting Requirements	)	
for Incumbent Local Exchange	)	
Carriers:	)	
Phase 2 and Phase 3	)	

COMMENTS OF TDS TELECOMMUNICATIONS CORPORATION

TDS Telecommunications Corporation (TDS Telecom), by its attorneys and on behalf of its 106 incumbent local exchange carriers (ILECs) serving largely rural areas in 28 states, submits these Phase 2 comments in response to the Notice of Proposed Rulemaking (NPRM) in the above-captioned proceeding.[1] All of the TDS Telecom ILECs are now, and have always been, classified as Class B carriers, below the Commission's "indexed revenue threshold." As such, none has been subject to reporting requirements under ARMIS or required to file a Cost Allocation Manual (CAM), to arrange for audits or to comply with Class A accounting requirements.

TDS Telecom commends the Commission for its continuing efforts to reduce the regulation imposed on ILECs now that they face competition, as a result of the 1996 Act and the

[1] In the Matter of 2000 Biennial Regulatory Review – Comprehensive Review of the Accounting Requirements and ARMIS Reporting Requirements for Incumbent Local Exchange Carriers: Phase 2 and Phase 3, CC Docket No. 00-199, FCC 00-364 (rel. Oct. 18, 2000).

Commission's implementing rules and policies. Indeed, TDS Telecom supports relaxed regulation for <u>all</u> ILECs, from the largest to the smallest, and particularly for what are often referred to as "mid-sized companies." Our purpose in these comments, however, is to focus on a single issue crucial to the proper regulation of small and rural ILECs owned by holding companies and to the customers they serve.

TDS Telecom's concern relates to the Commission's intention to consider (para. 83) whether the "definition of mid-sized incumbent LECs should be re-examined," and specifically to the alternative of basing a new revenue threshold "on holding company revenues instead of operating company revenues, with a corresponding [but unspecified] change in threshold." TDS Telecom opposes substituting a holding-company-based threshold to justify heavier regulation for any small and rural operating company, including by accounting classification or by the imposition of ARMIS reporting or CAM filing and audit requirements. Such "one size fits all" classifications almost always result in treating commonly-owned small and rural operating companies both inappropriately for their circumstances and differently from other similarly-situated small and rural carriers. Since affiliation with other similar carriers has no effect on the balance between the costs and benefits of burdensome regulation for ILECs that serve small and rural service territories, a carrier-by-carrier standard is the essential starting point.

<u>The Commission Should Retain a Carrier-Based Revenue Threshold</u>

Since the costs of increasing regulation for a small company can easily outweigh the benefits to the public of imposing additional regulatory burdens, the Commission has always determined what carriers must comply with stricter reporting and accounting requirements based on operating company revenues.[2] By looking at each carrier's revenues, rather than those of the parent and all affiliated carriers, the Commission excludes carriers on the basis of their own size and traffic. Unlike the largest ILECs for whom the stiffer requirements were designed, such companies typically have far fewer subscribers and far smaller interstate traffic volumes from which to recover the costs of regulation. Recognizing that cost increases had outdated its earlier threshold, the Commission adopted an "indexed revenue threshold," currently set at $114 million. Under the current individual benchmark, the TDS Telecom ILECs remain Class B operating companies, not subject to the onerous ARMIS and CAM filing obligations or to Class A accounting requirements.

ILEC-based classification has worked well. The Commission has no facts that indicate that a threshold based on holding company revenues would better delineate where the benefits of increased regulation outweigh the costs for smaller operating companies. Nor has there been any indication that using carrier, not parent, revenues has been in any way inconsistent with the interests of consumers or the Commission's intention here to reduce regulatory burdens. Changing to a holding company revenue threshold would incorrectly assume that affiliation makes a difference in assessing what regulatory relief is appropriate. If it is set too low, each and every affiliated ILEC would individually have to use more costly accounting methods and

[2] For example, in adopting its cost allocation rules, the Commission recognized "that many of the proposals in the NPRM were developed with larger telephone companies in mind…," and therefore considered limiting, modifying or creating exceptions for small telephone companies. It decided to apply the underlying allocation requirements to such carriers, but to exempt all but "Tier I" local exchange carriers (the forerunner of classification under the current indexed revenue threshold to individual operating companies) "from most of the potentially burdensome enforcement provisions, including the requirement that a cost manual be filed, the requirement of an annual independent audit, and the interim reporting requirements we will establish for purposes of monitoring cost allocations made pursuant to our standards…." Separation of Costs of Regulated Telephone Service from Costs of Nonregulated Activities, CC Docket No. 86-111, 2 FCC Rcd 1298, paras. 42, 47 (1987). Similarly, in adopting Automated Reporting Requirements, the Commission "decided to apply the requirements set forth in this Order only to Tier 1LECs, although reporting had been proposed at the Class A level. Both classifications look at individual carrier revenues, not affiliated group revenues. It explained that "by applying the requirements of this Order to Tier1LECs, we are effectively increasing the reporting threshold from that proposed in the NPRM, and also making our reporting threshold more consistent with our Part 32 definition of Class A carriers." Automated Reporting Requirements for Certain Class A and Tier 1 Telephone Companies (Parts 31, 43, 67, and 69 of the FCC's Rules), 2 FCC Rcd 5770, para. 24, CC Docket No. 86-182, FCC 87-242 (1987) (ARMIS Order).

compile and justify extensive data particular to that ILEC, just as unaffiliated small companies would if not exempted. In contrast, the D.C. Circuit held that the Commission cannot simply assume that affiliation alone confers significant economies of scale in performing multiple cost studies, when the FCC made average schedules unavailable to affiliated groups with $40 million in aggregate revenues.[3] Noting that average schedules were available to other small ILECs, the court held that "the economy of scale [justifying requiring full cost studies] seems to arise as a function of the size of the exchange carrier rather than as a function of the size of the affiliated group of carriers." The cost of a study is the same whether performed by an affiliated carrier or an individually-owned carrier, explained the court, and there was no factual support for the supposition that the "scale of aggregate revenues" is relevant to whether a burdensome cost study requirement should cover all affiliated ILECs. Here, too, the "scale of aggregate revenues" does not overcome the similar situation where the costs of shouldering much greater accounting and reporting requirements "overwhelms whatever benefits would derive from such studies," so that "affiliation which does nothing to alter the characteristics of the study area" is not a relevant criterion for assigning costlier compliance requirements. Here, too, the lack of economies of scale that make it inappropriate to require other small and rural companies to bear regulatory burdens designed for the largest carriers affiliates is not changed by common ownership: ARMIS Reports, CAM filings and audits and Class A accounts all require information and analysis at the individual carrier level.[4] Independently owned carriers can obtain consultants to prepare their filings, as the Alltel court noted, and as rate-of-return regulated companies can set

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[3] ALLTEL Corp. v. FCC, 267 U.S. App. D.C. 253, 838 F.2d 551, 556 (D.C.Cir. 1988). See, also, NARUC v. FCC, 737 F.2d 1095, 1133 (D.C. Cir 1984), cert. denied, 469 U.S. 1227 (1985).

[4] If the Commission selected a holding company threshold exceeded by TDS Telecom's revenues, for example, the burden upon TDS Telecom's 106 local exchange carriers to prepare and file 106 reports and 106 CAMs and convert 106 sets of accounts to the Class A level would not be reduced just because there are 106 sets of requirements rather than one.

rates to recover the costs of compliance. However, the costs of non-cost effective regulation based solely on affiliation would ultimately fall on interstate ratepayers.

To be sure, if the Commission adopted a high enough holding company revenue threshold, no affiliated group would be subjected to heavier regulatory burdens. However, from the order it is not even clear what holding company level the NPRM is considering. The NPRM often seems to indicate that whole carrier groups are covered under the current rules when one carrier exceeds the threshold. For example, the NPRM states that Alltel, Frontier, Sprint, Citizens and Century Telephone, all holding companies, have revenues above the threshold, when only a few operating companies are subject to stricter regulation.[5] Similar ambiguity leaves parties to guess whether the Commission is considering looking at the aggregated revenues of intermediate holding companies or at the top of the corporate ladder. A new threshold would have quite a different impact if applied to all of Alltel or TDS Corporation than if the revenues were limited to the commonly-owned local carriers. Under either choice, setting the threshold too low could suddenly impose greater regulatory burdens on a large number of operating companies that have never before been subject, without any regard to the size or characteristics of each such carrier. Both holding company levels, moreover, fail to qualify as a logical point to draw the boundary to determine when carriers and interstate ratepayers must shoulder the costs of increased regulation. The Commission should adhere to its long-established practice of suiting regulatory burdens in the first instance to the individual operating company, consistent with the deregulatory intent of this statutorily mandated proceeding.[6] Each

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[5] Compare NPRM at note 10, para. 81, note 30 and para. 50 (describing whole corporations as currently classified as Class A carriers allowed to use Class B accounts), with note 96 (properly distinguishing operating and holding companies).

[6] 47 U.S.C. Section 11.

carrier should be regulated appropriately for its size and resources, with a threshold based on its own revenues.

The Commission's current operating company-based definition properly recognizes that the TDS Telecom ILECs are scattered and largely rural companies that cannot look to the revenues of affiliated ILECs to pay their regulatory costs in a competitive environment. The Commission should look for ways to let each company respond to market forces and the needs of customers in its area, not at ways to impose regulatory lockstep solely because of common ownership. Forcing commonly owned carriers into a single regulatory mold based on their aggregate characteristics is inconsistent with the growing need of each operating company for rules geared to its own size and the characteristics of its service area. Competition will come for each operating company in ways driven by its market, and regulation should not be imposed on an aggregate basis.[7]

The current rules, based in the first instance on individual carrier revenues, leave some room for supplementary standards that further relax regulation for mid-size companies. In fact, the definition of "mid-sized company" in section 32.9000 of the Rules completely excludes all 106 TDS Telecom ILECs (and most of the other companies often referred to as mid-sized in industry parlance), from the reach of that term. That definition says that a

> [m]id-sized incumbent local exchange carrier is a carrier whose operating revenue equals or exceeds the indexed revenue threshold and whose revenue when aggregated with the revenues of any local exchange carrier that it controls, is controlled by, or with which it is under common control is less than $7 billion. …

[7] TDS Telecom strongly supports the Multi-Association Group (MAG) plan, which the Commission has said it will soon consider. That plan seeks recognition that regulatory reform should be available on an operating company or study area basis because market forces are blind to common ownership and customers are deprived of opportunities and carrier investments when inappropriate regulation is in force.

Since no TDS Telecom ILEC "equals or exceeds the indexed revenue threshold," none is a mid-sized carrier.[8] This classification as small ILECs is eminently reasonable, since carriers below the carrier-based regulatory threshold are, for these purposes, properly treated like the individually-owned small and rural companies from which they are indistinguishable for purposes of weighing the costs and benefits of regulatory changes.

Fair and carrier-specific treatment for individual operating companies does not mean that regulatory relief should be denied to carriers that fall within the definition of "mid-sized companies." The definition above contains a necessary safety net for certain carriers that are above the benchmark, but are part of relatively small holding companies. It provides that:

> Each of these [mid-sized] local exchange carriers would be eligible for Class B accounting, except as noted in §32.11(b) and (d), even if the annual operating revenue of any individual local exchange carrier exceeds the indexed revenue threshold (see definition for indexed revenue threshold in this section).

TDS Telecom endorses this type of safety net, as long as the individual carrier threshold remains a part of it, and no new burdens are imposed on carriers that have heretofore been spared them.

<u>The Commission Should Broaden the Relief Available for Carriers Above and Below the "Indexed Revenue Threshold"</u>

TDS Telecom supports the Commission's suggestion of increasing the "indexed revenue threshold" to broaden the group of carriers that are not subject to Class A accounting requirements, ARMIS and CAM filing. While $200 million would be a definite improvement, TDS Telecom suggests that the Commission raise the threshold to $500 million, in keeping with the Act's deregulatory thrust. That would go even beyond excusing carriers such as Century's Washington company and Roseville Telephone Company from filing initial CAMs under the

[8] The Commission's definition is well-drafted because it observes the distinction between a carrier and a group of carriers or holding company. Often the term "carrier" is incorrectly used to mean a group of affiliated carriers or the holding company that owns them. For example, even the NPRM (para. 81) states that Century Telephone "now has revenues that exceed the current indexed revenue threshold." In fact, it is just one of Century's operating companies that exceeds the current, overly-low threshold, and all others are still below the threshold. NPRM, n. 98.

current two-part definition. It would provide flexibility for growth for other carriers. At the very least, there is no sound reason for a Commission engaged in gradual deregulation to add to the regulatory burdens of any ILEC because of incremental revenue growth. It would make the most sense for the Commission to increase the threshold to $500 million and then exempt carriers that meet that level today from future increases in regulation -- unless there is clear evidence that added regulation is necessary to protect ratepayers.

In the section of the NPRM about "Relief for Mid-Sized Carriers,"[9] the Commission indicates the steps it has taken already to reduce regulatory burdens on "mid-sized incumbent LECs." The NPRM proposes (para. 81) to treat mid-sized Class A carriers as Class B carriers or to eliminate Cost Allocation Manual (CAM) filings and audits and financial reporting requirements for these Type A mid-sized ILECs. TDS Telecom supports the maximum measure of relief for those few mid-sized ILECs that are currently subject to these requirements. The NPRM also goes on (para. 82) to propose further relief for those ILECs that are above the current $114 million indexed revenue threshold but below $7 billion in aggregate revenues. It considers eliminating the requirement to maintain a CAM in the format prescribed in section 64.903 of the Rules, or, at least, eliminate the annual CAM filing duty. As an alternative proposal, the Commission suggests requiring an annual certification of compliance with section 64.901 of the Rules. TDS Telecom again supports the granting of maximum relief to the affected mid-sized carriers.

Conclusion

The Commission is well-justified in pressing forward with the job of relaxing regulation on ILECs. In doing so, however, the Commission should not forsake the carrier-based "indexed revenue threshold" that has for many years spared smaller ILECs from the heavy regulatory

[9] NPRM at paras. 81-83.

burdens designed for the largest ILECs. Turning to a holding company-based threshold would blind the Commission to the size and needs of the individual commonly-owned carriers and the need to save interstate ratepayers from unnecessary regulatory costs. At the same time, the Commission should preserve the safety net sparing smaller holding companies from type A accounting requirements and further relax its CAM and ARMIS requirements for mid-sized companies.

Respectfully submitted,

TDS TELECOMMUNICATIONS CORPORATION

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